IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10605 OF 2004

Shri Chatrapati Shivaji Shikshan
Prasarak Sanstha & anr. .... Petitioner

versus

Smt. Sharda Vitthal Memane & ors. ... Respondents.

Mrs. Anita Agarwal for the petitioner.
Ms. Aradhana Latne for Respondent no.1.
Shri S.J. Rairkar for Respondent no.2.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 17, 2006.

P.C:

1. Heard the learned advocate for the Petitioner as well as respondent.

2. This petition is moved by the Educational Institution against whom an order was passed by the Presiding Officer of the School Tribunal, Pune dated 30-9-2004 allowing the aooeal and oral termination of the appellant's services, who is present respondent no.1, was set aside. There was also further direction of reinstatement of the present respondent no.1 with full backwages and consequential benefits.

3. After the appeal was allowed, Review Petition was filed by the present petitioner, to review the said order on various grounds, interalia submitting that the advocate engaged on their behalf did not inform them about the progress of the matter, as a result of which no written statement came to be filed and there was no opportunity to produce the document in support of the institution's stand and therefore there was no opportunity to defend the case effectively and as such the review was sought to be allowed and appeal was requested to be heard afresh, after allowing the institution to file its written statement. With the said reviewpetition, the written statement also came to be filed by the petitioner institution in orderto show their bonafides in that regard.

4. The lower court after hearing both the parties, came to the conclusion that the petitioner was found to be negligent and therefore review petition came to be dismissed. Hence the present petition.

5. At the outset it may be noted that it is apparent from the record that the petitioner had engaged a lawyer to defend their case in the lower court. However he withdrew his vakalatnama on 17-7-2002 by filding a pursis mentioning therein that respondents do not turn up to him. On that basis the lower court has

concluded that the petitioner who was negligent in the matter of putting their case before the court through the said advocate and as such the review was held to be devoid of any merit.

6. It is significant to note that the record does not show that whether before withdrawing the appearance by filing pursis on 17-7-2002 the concerned advocate had issued notice as required under the relevant rules to the present petitioner informing that he was not willing to represent them for want of co-operation and in the absence of any record to that effect, I must hold that unilateral withdrawal of the appearance by the concerned advocate which ultimately resulted in the petitioner's case being disposed of without effective hearing, amounts to miscarriage of justice. Under the circumstances, I am inclined to hold that the matter deserves to be considered from the said angle and it was necessary for the lower court to give an opportunity to the petitioner to file written statement as well as documents if any in order to present their case effectively before the said forum.

7. The learned counsel for the respondent no.2, who is administrative officer of Primary School Board of Municipal Corporation, Pune, submitted that when the review petition was rejected on the ground of

negligence on the part of the petitioner, it should not be considered at all because remand of the matter would entail possibility of sadling the amount of backwages upon them. However, in my considered view, that would be the issue for consideration of the lower court and we are not concenred at this stage regarding the order of payent of backwages to the aggrieved teacher. Be as it may, the facts remains and the matter deserves to be allowed and must be remanded with directions regarding its disposal within the time frame.

8. Hence rule is made absolute. The order dated 30-9-2004 allowing the appeal passed by the Presiding Officer, School Tribunal, Pune and subsequent order dated 5-11-2004 passed by the Presiding Officer rejecting the Review Petition, are hereby set aside. The matter is remanded to the concerned forum with direction that the petitioners shall be given an opportunity to file the written statement as well as lead its evidence, documentary as well as orally if any, and thereafter the tribunal shall decide the said issue at hand on merits so as to disopose it of within six months from the date of this order. With this direction the petition stands disposed of with no order as to costs.

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